

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 3458/2016

Reserved on : 18.01.2021
Pronounced on : 01.03.2021

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd.Jamshed, Member (A)

S.N. Ojha
Aged about 55 years
Deputy Commissioner
R/o 2nd Floor, 303, Double Story,
New Rajender Nagar,
New Delhi.

...Applicant

(By Advocate: Shri Piyush Kumar)

Versus

1. Union of India
Through Secretary (Revenue),
Ministry of Revenue,
Department of Revenue,
North Block,
New Delhi - 110001
2. The Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi - 110001

..Respondents

(By Advocate : Shri L.C. Singhi)

ORDER**Justice L.Narasimha Reddy, Chairman**

The applicant is working as Deputy Commissioner in the Central Board of Excise and Customs. He was issued a memorandum of charge dated 01.09.2016. The allegation against the applicant was that while working as an incharge of the clearance cell, at ICD, Tuklakabad in 1997, he cleared the goods belonging to M/s Cinex Overseas, Delhi valued at Rs.6979.50 per kg of beads and thereby enabled the exporter to avail a DEPB credit of Rs.83,69,478/-, and when the goods were stopped at the stage of export at Bombay and verified, it emerged that the value was not more than Rs.50/- per kg., and thereby caused huge loss to the revenue. It was alleged that the bills were processed by Inspector, Superintendent and the applicant acting as Commissioner, and there was serious lapse on their part.

2. The applicant filed this OA challenging the charge memo. He contends that there was enormous delay in issuing the charge memo and that it would not be possible to conduct any dispassionate inquiry into a stale and old matter stipulated in the

year 1997. He further contends that the actual verification of the goods was undertaken by the Inspector and Superintendent and that the Commissioner is not supposed to physically verify the goods. Various other contentions are also urged.

3. The respondents filed a detailed reply. It is stated that the DEPB is permitted as an incentive for export of valuable goods, so that the Country would get the benefit of foreign exchange and when an exporter is to get the benefit of exemption of payment of customs duty, otherwise payable, the verification was required to be stringent and proper. The respondents stated that the delay occurred in the process of obtaining information at various places and detailed particulars thereof are furnished. It is also stated that the truth or otherwise of the charges leveled against the applicant ascertained only during the course of the inquiry. Reliance is placed upon the judgement of the Hon'ble Supreme Court in ***Secretary to Government, Prohibition & Excise Department vs. L.Srinivasan(1996) 3 SCC 157; The Secretary, Ministry of Defence and Ors vs. Prabhask Chandra Mirdha (2012) 11 SCC 565; Union of India vs. Upendra Singh (1994) 3 SCC 357, etc.***

4. The learned counsel for the applicant Sh. Piyush Kumar and learned counsel for the respondents Sh. L.C.Singhi, have argued at length, elaborating the respective pleadings.

5. The applicant was issued a charge memo dated 01.09.2016. This is in relation to the allegation, pertaining to the acts or omissions on the part of the applicant, in the year 1997 while clearing the goods for export and assessing the value, in the context of allowing DEPB. The description of the goods and the details of the value as affirmed by the applicant were furnished. The plea of the applicant is that the actual verification of the samples is required to be done by the Inspector and Superintendent and he has only affirmed the valuation made by them.

6. The very purpose of having a hierarchy of officers for taking a decision on whatever matter, is to ensure that no lapse occurs at any stage. It is true that the detailed verification would be done at the lower level. However, the one, who ultimately approves it, cannot be expected to blindly sign whatever is placed before him. It is particularly so, when huge financial implications were involved. The applicant was required to make a physical

verification to satisfy him, though not in the same manner as in the case of the Inspector and the Superintendent. If his function was just to put a seal of approval on whatever was done by the Inspector and Superintendent the very exercise becomes redundant. Therefore, we do not agree with the plea of the applicant that he has no role to play in the entire process. We, however, are not recording any finding in this behalf and it needs to be considered in the inquiry.

7. The second ground pleaded by the applicant is about the delay. It is true that a cursory look at the dates on which the clearance has been taken place on the one hand and the one on which the charge sheet was issued would make one to believe that it was a belated exercise into an otherwise stale matter.

8. The respondents however have furnished a detailed account of the steps that were taken in the matter ever since the goods were detained and the final decision in this regard was taken. In para-16 of the counter affidavit they have furnished the details of the events that took place between 25.02.1999 and 01.09.2016, and they are as under :

- (i) Complaint dated 25.2.1999 received from Commissioner, ICD TKD in the Directorate General of Vigilance (DGOV).
- (ii) North Zonal Unit of DGOV submitted the investigation report to DGOV Hqrs on 14.5.2010.
- (iii) Proposal sent to CVC on 13.06.2012 for first stage advice.
- (iv) CVC rendered first stage advice vide OM dated 07.08.2012, advising among other thing, minor penalty, submitted by DGOV.
- (v) Letter was issued to DGOV on 15.4.2013 to send the Draft Charge Sheet for minor penalty, instead of major penalty, submitted by DGOV.
- (vi) A letter was issued on 11.11.2013 to DGOV requesting to clarify how the charged officer failed to follow the Board Circular No. 15/97-Cus dated 3.6.97 at the stage of processing of shipping bills followed by reminders dated 27.1.2014, 7.4.2014, 3.6.2014, 11.7.2014 and 15.2.2016.
- (vii) The requisite clarification was received from DGOV on 10.3.2016 stating that the Charged Officer failed to supervise properly his subordinate officers.

(viii) Letter dated 17.3.2016 was sent to DGOV to refer the matter to CVC for reconsideration of its advice for initiation of minor penalty.

(ix) Letter received from DGOV on 25.5.2016 informing to proceed and implement the advice conveyed earlier.

(x) After due approval of Competent Authority, charge sheet for minor penalty was issued to the applicant on 1.9.2016.

9. Therefore, it cannot be said that the respondents have raked up a stale issue and initiated disciplinary proceedings against the applicant. Unless such a scrutiny is undertaken the revenue of the state would not at all be safe. As observed earlier, the question as to whether there was any lapse on the part of the applicant can be examined only in the detailed inquiry, which is proposed.

10. In the judgements referred to in the previous paragraphs as well as in the subsequent judgements, it was clearly held that the occasion for a Court or Tribunal to interfere with the charge would arise only when the proceedings are initiated by an authority not vested with the power or when no act of misconduct can be perceived or discerned, even if the allegations made in the charge

memo are taken as true. None of these grounds are urged in this case.

11. We do not find any merit in this OA and the same is accordingly dismissed. There shall be no order as to costs.

(~~Mohd. Jamshed~~)
Member (Admn.)
sd

(Justice L.Narasimha Reddy)
Chairman